

writ acted maliciously. The Court of Appeal held that the defendants were liable in trespass, though in the absence of malice, they were not liable in an action on the case. It must be noted that in that case the debt was paid at the solicitor's country office to the solicitor's clerk, who had authority to receive the money and to give a receipt. In the present case the judgment debt was paid into court without the court's authority. Counsel for the defendants was unable to cite any authority for the proposition that an unauthorised payment into court of a judgment debt is complete satisfaction of the judgment. Indeed, I would be surprised if such authority could be found. The High Court is not a debt-collecting agency.

Every person to whom any sum of money is payable under a judgment is entitled to sue out a writ of seizure and sale to enforce payment thereof unless the court has ordered a stay of execution. In this case the defendants never applied for a stay of execution on the judgment. Counsel for the defendants argued that the defendants did not have to obtain a stay of execution because they were going to pay and had paid the full amount of the judgment and costs into court. In my view unless the full amount of the judgment debt is paid to the judgment creditor, a stay of execution has to be obtained by a judgment debtor if he wishes to avoid seizure of his property, and an unauthorised payment into court does not deprive the judgment creditor of his rights to seize the judgment debtor's property under Order XL rule 16. In this case there was no order of court staying execution on the judgment and the plaintiffs were well within their rights in levying execution on the defendants' property to enforce payment of the judgment. Under the circumstances it could not be said that the writ of seizure and sale was void or that the seizure was illegal. The seizure could not be removed unless the amount due under the writ of seizure and sale was paid to the sheriff or execution on the judgment was stayed by the court. The defendants were neither willing to pay the amount due to the sheriff nor willing to apply for a stay of execution. They took the stand that because they had paid the full amount of the judgment and costs into court, the seizure was wrong and should be removed forthwith. In my view their stand was clearly wrong in law and I had no alternative but to dismiss their application.

Application dismissed.

Solicitors: *J. Tan Chor-Yong & Co.; Pillai & Co.*

A ER AH KIAT v. PUBLIC PROSECUTOR

[F.C. (Barakbah C.J. (Malaya), Wylie C.J. (Borneo) and Tan Ah Tah F.J.) July 13, 1965]

[K.L. — Federal Court Criminal Appeal No. 32 of 1965]

Criminal trial — Statement of accused — Inquiry as to admissibility of statement — Evidence given in such inquiry by accused relating to facts of case and raising a defence — Accused subsequently in giving evidence referring to this evidence — Failure to consider such evidence — Conviction set aside.

The appellant was charged with having under his control a hand-grenade. He had made a statement to the police and at the trial the admissibility of this statement was challenged. On this issue the accused gave evidence on oath, in the course of which he explained how he came to know of the existence of the hand-grenade and where it was hidden. That evidence, if believed, established that the hand-grenade was not under his control but under the control of his friend. The statement was admitted and subsequently in his defence the appellant made an unsworn statement from the dock in the course of which he said "as to the facts of the hand-grenade I have already related to the court". The appellant was convicted and the trial judge in his judgment stated that he did not think he should consider the evidence given earlier by the appellant.

Held: (1) the statement of the accused amounted in effect to repeating to the court the explanation he had given in the witness box and therefore this explanation had become part of his defence as expounded in his unsworn statement;

(2) the failure to take the evidence into consideration amounted in effect to a failure to consider a defence which had been put forward and therefore the conviction must be set aside and a retrial ordered.

FEDERAL COURT.

T. T. Rajah for the appellant.

Mohamed Salleh bin Abbas (Deputy Public Prosecutor) for the respondent.

Wylie C.J. (Borneo) (delivering oral judgment): The appellant was convicted of having under his control one hand-grenade without lawful authority. He was tried before a judge alone and during the trial the admissibility of the statement he made was challenged and this issue was tried separately. On that issue, he gave evidence on oath. His evidence concerned principally the circumstances under which he gave the statement, and much of this statement was relevant only to that issue and not relevant on the issue of his guilt or innocence of the offence charged. However, in the course of his evidence he explained how he came to know of the existence of the hand-grenade and where it was hidden. That evidence, if true, established that the hand-grenade was not under his control but under the control of his friend who had merely told him of its existence and the location.

The statement was admitted and in the course of a written judgment on this issue, the judge came to the conclusion that the appellant in his evidence had told lies concerning the circumstances leading to the making of the statement. Quite properly the judge expressed

no view at that stage on his evidence as to how he came to know of the existence of the hand-grenade. This is the view that the court takes of his judgment notwithstanding the submissions that were made on behalf of the prosecution this morning. The language used by the learned judge relates only to the evidence concerning the circumstances under which that statement was taken.

At the close of the case for the prosecution there was a submission of no case to answer. The judge over-ruled this submission and in his judgment on this issue he held in favour of a submission made on behalf of the prosecution that the evidence given on the issue of the admissibility of the statement should not be taken into account on the question whether there was a case to answer.

In his defence the appellant made an unsworn statement from the dock in the course of which he said:

"As to the facts of the hand-grenade I have already related to the court."

This was an obvious reference to the earlier evidence on oath concerning how he knew of the hand-grenade.

In the course of his judgment the judge said in reference to that evidence:

"I do not think I should consider that evidence for the purpose of this judgment."

The only other reference to the defence in the judgment is a repetition of what the appellant said from the dock. Nowhere does the judge express any view on the evidence given by the appellant to the effect that it was a friend who told him of the location of the hand-grenade, or appear to consider this evidence at all.

Counsel for the appellant submitted that the judge, in considering whether or not the offence was proved, should have taken into account the evidence given during the enquiry as to the admissibility of the statement, and that his failure to do so meant that the defence had not received consideration. For the prosecution it was submitted that the judge ruled correctly in refusing to take into account the evidence in question.

This is apparently a novel point in the case of a trial by a judge without a jury, and neither counsel could submit any authority. It is not necessarily a simple question. For the evidence on the issue of admissibility of a statement may include evidence that is inadmissible on the trial for the offence. The issue of the admissibility of a statement generally takes the form of a separate enquiry. To that extent, the circumstances are different from those in which, in the course of a trial without this separate enquiry, evidence may become admissible because it is relevant to a particular issue, but, once admitted,

A become part of the evidence for all purposes.

However, in this trial this issue does not require further consideration because there was an added factor introduced by the fact that the appellant referred back to his evidence on oath concerning the hand-grenade itself. In the opinion of this court, this statement amounted in effect to repeating to the court the explanation he had given in the witness-box and therefore this explanation had become part of his defence as expounded in his unsworn statement. It should therefore have had consideration before judgment was delivered.

C This morning the Deputy Public Prosecutor has submitted that this defence did have consideration in considering the admissibility of the statement and therefore, if the learned judge had considered it again, the result of the trial would have been no different. The language used by the judge certainly does not make this clear, and as I have already said, in the opinion of the court it does not mean that the judge considered this evidence, which related only to the substantive defence and not to the question of the admissibility of the statement. Setting this against the measured words in the final judgment that this evidence is not to be taken into account in considering the issue of guilty or not guilty, there is nothing in the record to persuade this court that this defence did have consideration.

F As it was the only defence put forward, the position is that the defence has not been considered at all. In accordance with established principles a conviction so arrived at cannot stand. Consequently this appeal must be allowed, the conviction and sentence set aside and a new trial ordered.

G As there will be a new trial, this court will not review the other ground of appeal argued, as this would involve expressing views on other important aspects of the evidence, as given at the first trial.

Appeal allowed. New trial ordered.

H CHIN BOON KENG v. SRI JAYA TRANSPORT CO. (P.T.M.) LTD. & ANOR.

[F.C. (Barakbah C.J. (Malaya), Wee Chong Jin C.J. (Singapore) and Tan Ah Tah F.J.) July 15, 1965]

[K.L. — Federal Court Civil Appeal No. 5 of 1965]

I *Damages — Leg — Amputation above knee — Trend of awards.*

This was an appeal against the decision of the High Court noted at [1965] 1 M.L.J. xii. The appellant, a schoolboy aged 13, lost his leg by amputation above the knee as a result of severe injuries received when he was knocked down by the respondent's motor-bus. The parties were equally to blame and the learned judge awarded \$11,698.30 comprising of \$4,198.30 special damages and \$7,500 as general damages. On appeal,